

AMENDED IN SENATE APRIL 12, 2004

SENATE BILL

No. 1155

Introduced by Senator Machado

January 28, 2004

An act to add Section 79442 to the Water Code, relating to water.

LEGISLATIVE COUNSEL'S DIGEST

SB 1155, as amended, Machado. Sacramento-San Joaquin Delta.

Existing law, the California Bay-Delta Authority Act, establishes in the Resources Agency the California Bay-Delta Authority until January 1, 2006, unless a certain determination is made. The act requires the authority and the implementing agencies, as defined, to carry out the programs, projects, and activities necessary to implement the Bay-Delta Program, defined to mean those projects, programs, commitments, and other actions that address the goals and objectives of the CALFED Bay-Delta Programmatic Record of Decision, dated August 28, 2000, or as it may be amended. The act requires the authority to review, approve, and make recommendations regarding certain program plans and expenditure plans submitted by the implementing agencies and to undertake related actions.

This bill would prohibit a public agency from assisting any other public agency in implementing any of the actions described in a specified document concerning the integrated operations of the Central Valley Project and the State Water Project until an interagency agreement or similar instrument is signed and executed by specified persons representing the authority and member agencies of the authority. The bill would require that agreement to describe the components of, schedule for, and implementation strategy of, an

integrated delta improvement package for conveyance, water quality, and environmental protection.

~~This bill, with a certain exception, would prohibit a public agency, including the authority, from assisting or cooperating with any other public agency for the purposes of increasing pumping from the Sacramento-San Joaquin Delta beyond levels authorized under applicable operating criteria in effect on July 1, 2003, until the authority, the State Water Resources Control Board or the appropriate California regional water quality control board, and the Department of Water Resources, in collaboration with the implementing agencies, undertake certain actions in accordance with a process that encourages public participation and in furtherance of certain described solution principles.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. The Legislature finds and declares all of the
2 following:

3 (a) The CALFED Programmatic Record of Decision (ROD)
4 and its associated documents described actions that were intended
5 to take place in an integrated framework and not independently of
6 one another. While each program element was described
7 individually, it was understood that only through coordinated,
8 linked, incremental investigation, analysis, and implementation
9 could the problems in the Sacramento-San Joaquin Delta (delta)
10 be effectively resolved.

11 ~~(b) (1) The implementation of the Bay-Delta Program, as~~
12 ~~defined by subdivision (e) of Section 79402 of the Water Code, has~~
13 ~~not been balanced across all programs, as described in subdivision~~
14 ~~(b) of Section 79402 of the Water Code.~~

15 ~~(2) The implementation has not been consistent with the~~
16 ~~implementation schedule and milestones described in the~~
17 ~~CALFED ROD.~~

18 ~~(3) The implementation has not resulted in concurrent~~
19 ~~improvement in all program elements in a manner that ensures that~~
20 ~~improvements in some program elements are not made without~~
21 ~~corresponding improvements in other program elements.~~



~~(c) Each of the following CALFED documents stated that prior to increasing pumping from the delta to up 8,500 cubic feet per second during periods that are restricted under applicable operating criteria, new operational rules for use of additional export capability will be determined through an “open CALFED process”:~~

~~(1) The CALFED ROD prepared by the CALFED Bay-Delta Program, dated August 28, 2000.~~

~~(2) “Section 7” biological opinions prepared by the United States Fish and Wildlife Service, dated August 28, 2000.~~

~~(3) “Section 7” biological opinions prepared by the National Marine Fisheries Service, dated August 28, 2000.~~

~~(4) The natural community conservation plan determination made by the Department of Fish and Game, dated August 28, 2000.~~

~~(5) The publication entitled “California’s Water Future, a Framework for Action,” prepared by the CALFED Bay-Delta Program, dated June 9, 2000.~~

~~(d) The Department of Water Resources convened an open CALFED process in 2002 to try to develop an operational rules plan that would increase delta pumping to up to 8,500 cubic feet per second during periods that are currently restricted. In the progress report entitled “Report on 8500 Stakeholder Process to California Department of Water Resources,” dated October 31, 2002, the facilitator found that the stakeholder groups had not reached consensus on an operations plan.~~

~~(e)–~~

~~(b) Recent private negotiations between the Department of Water Resources and the United States Bureau of Reclamation have resulted in a plan to increase delta pumping to up to 8,500 cubic feet per second during periods that are currently restricted. This “Draft Proposition Concerning CVP/SWP Integrated Operations,” also known as the “Napa Agreement,” was developed behind closed doors, without direct input from many stakeholder groups or from state or federal wildlife agencies. The Napa Agreement does not conform to the CALFED solution principles. Moreover, “after the fact” negotiations between a few delta export interests and a select group of delta water agencies in no way substitutes for consultations undertaken in accordance with an open CALFED process.~~

~~(f) In order to restore balance in the implementation of the ROD, to ensure that the Bay Delta Program fulfills its commitment to achieving continuous improvement in the quality of the waters of the delta system, and to preserve the integrity of the CALFED process, it is necessary for the Legislature to enact this act.~~

(c) It is important that any effort to increase delta pumping be conducted consistent with the original CALFED objectives and the CALFED solution principles.

SEC. 2. Section 79442 is added to the Water Code, to read:

79442. (a) Notwithstanding subdivision (c) of Section 79403.5, ~~no public agency, including the authority, may assist by~~ *no public agency may assist any other public agency in implementing any of the actions described in the document entitled “Draft Proposition Concerning CVP/SWP Integrated Operations” until an interagency agreement or similar instrument is signed and executed by all of the following:*

(1) The director.

(2) The Director of Water Resources.

(3) The Director of Fish and Game.

(4) The Regional Director of the United States Mid-Pacific Region of the Bureau of Reclamation.

(5) The Regional Administrator of the Southwest Region of the United States National Marine Fisheries Service.

(6) The Operations Manager of the California/Nevada Operations Office of the United States Fish and Wildlife Service.

(b) The interagency agreement shall describe the components of, schedule for, and implementation strategy of, an integrated delta improvement package for conveyance, water quality, and environmental protection.

(c) The integrated delta improvement package shall include, but is not limited to, all of the following elements:

(1) An aggressive integrated salinity management program for the Sacramento-San Joaquin Delta Estuary.

(2) Actions leading to progressive improvement in drinking water quality.

(3) Permanent operable barriers for salinity and water level management.

(4) A long-term funded environmental water account.

(5) *A joint operations plan describing actions leading to full implementation of the joint point diversion facilities and increasing pumping at the Banks Pumping Plant to 8,500 cubic feet per second. loan, grant, contract, license, permit, resolution, staffing, use of facilities, or otherwise cooperate with, any other public agency for the purposes of increasing pumping from the delta beyond levels authorized under applicable operating criteria in effect on July 1, 2003, until all of the following requirements have been met:*

(1) ~~The authority, in collaboration with the implementing agencies, prepares and implements a plan to meet all water quality standards and objectives in effect on July 1, 2003, for which the State Water Project or the federal Central Valley Project, or both, have responsibility. This plan shall include all of the following components:~~

(A) ~~An enumeration of all existing water quality standards and objectives for which the State Water Project, the federal Central Valley Project, or both water projects, have responsibility. This includes all flow based standards.~~

(B) ~~A description of each action to be undertaken to meet the standards and objectives described in subparagraph (A). The description shall include an identification of all of the following:~~

(i) ~~The agency responsible for implementing the action.~~

(ii) ~~The schedule for implementing the action.~~

(iii) ~~To the maximum extent practicable, quantitative estimates of the specific improvements to be realized by the implementation of the action toward meeting the standards and objectives described in subparagraph (A).~~

(C) ~~The water quality consequences of not meeting the implementation schedule described in clause (ii) of subparagraph (B).~~

(D) ~~A financing plan for implementing the plan.~~

(E) ~~A contingency plan to be undertaken if one or more of the plan's components is not implemented in accordance with this section.~~

(2) ~~The state board or the appropriate regional board, in collaboration with the implementing agencies, adopts a water quality control plan to address low dissolved oxygen in the San Joaquin River and adopts total maximum daily levels for~~

1 pollutants that cause that low dissolved oxygen in accordance with
2 Section 1313(d) of Title 33 of the United States Code.

3 ~~(3) The state board or the appropriate regional board, in~~
4 ~~collaboration with the implementing agencies, adopts a water~~
5 ~~quality control plan, and total maximum daily loads in accordance~~
6 ~~with Section 1313(d) of Title 33 of the United States Code, for~~
7 ~~salinity in the lower San Joaquin River and commences~~
8 ~~implementation of appropriate source control measures.~~

9 ~~(4) The department, in collaboration with the implementing~~
10 ~~agencies, completes a study and provides recommendations to the~~
11 ~~authority on the use of recirculation to meet the objectives of the~~
12 ~~Bay Delta Program. The study shall include an analysis of impacts~~
13 ~~and benefits, and recommendations on infrastructure~~
14 ~~improvements necessary to implement recirculation, as~~
15 ~~appropriate. The recommendations shall specifically address the~~
16 ~~role that recirculation will provide in improving dissolved oxygen~~
17 ~~levels in the San Joaquin River.~~

18 ~~(5) The authority, in collaboration with the implementing~~
19 ~~agencies, determines the feasibility of restoring habitat and~~
20 ~~improving hydraulic conditions on Frank's Tract in the delta to~~
21 ~~optimize improvements in ecosystem restoration, levee stability,~~
22 ~~and delta water quality.~~

23 ~~(6) The authority, in collaboration with implementing~~
24 ~~agencies, develops and adopts a process to certify urban water plan~~
25 ~~management prepared pursuant to Part 2.6 (commencing with~~
26 ~~Section 10610) of Division 6.~~

27 ~~(7) The authority, in collaboration with the implementing~~
28 ~~agencies, convenes an independent review panel on appropriate~~
29 ~~measurement of surface water and groundwater deliveries and~~
30 ~~prepares and submits to the Legislature a report regarding~~
31 ~~suggested legislation relating thereto.~~

32 ~~(8) The department, in collaboration with the implementing~~
33 ~~agencies, completes a funding plan to dredge and install operable~~
34 ~~barriers to ensure that water is of adequate quantity and quality for~~
35 ~~agricultural users within the south delta.~~

36 ~~(9) The department, in collaboration with the implementing~~
37 ~~agencies, completes environmental studies for floodway~~
38 ~~improvements on the lower San Joaquin River to provide~~
39 ~~conveyance, flood control, and ecosystem benefits.~~

1 ~~(10) The department, in collaboration with the implementing~~
2 ~~agencies, reconvenes and completes its process to develop a~~
3 ~~project specific operation plan that addresses the potential impacts~~
4 ~~of increased pumping.~~

5 ~~(b) (1) Each state agency that undertakes any activity~~
6 ~~described in paragraphs (1) to (10), inclusive, of subdivision (a)~~
7 ~~shall carry out that activity in accordance with an open bay delta~~
8 ~~process that encourages public participation.~~

9 ~~(2) For the purposes of carrying out activities described in~~
10 ~~paragraph (1), each state agency shall conduct periodic meetings~~
11 ~~that are publicly noticed and facilitated using consensus seeking~~
12 ~~techniques.~~

13 ~~(3) All actions undertaken or proposed by an agency pursuant~~
14 ~~to subdivision (a) shall conform to all of the following solution~~
15 ~~principles:~~

16 ~~(A) “Reduce conflicts in the system,” which means the action,~~
17 ~~in the judgment of the agency, will reduce major conflicts among~~
18 ~~beneficial uses of water.~~

19 ~~(B) “Be equitable,” which means the action, in the judgment~~
20 ~~of the agency, will focus on solving problems in all problem areas.~~

21 ~~(C) “Be affordable,” which means the action, in the judgment~~
22 ~~of the agency, will be implemented using the resources of the~~
23 ~~Bay Delta Program and affected parties.~~

24 ~~(D) “Be durable,” which means the action, in the judgment of~~
25 ~~the agency, will have political and economic staying power and~~
26 ~~will sustain the resources they were designed to protect and~~
27 ~~enhance.~~

28 ~~(E) “Be implementable,” which means the action, in the~~
29 ~~judgment of the agency, will have broad public acceptance and~~
30 ~~legal feasibility, and will be timely and relatively simple to~~
31 ~~implement when compared to other possible actions.~~

32 ~~(F) “Have no significant redirected impacts,” which means the~~
33 ~~action, in the judgment of the agency, will not solve problems in~~
34 ~~the delta system by redirecting significant negative impacts, when~~
35 ~~viewed in their entirety, to other areas of the delta or to areas~~
36 ~~outside the delta.~~

37 ~~(c) Notwithstanding subdivision (a), the department may~~
38 ~~conduct studies on the impacts of operating State Water Project~~
39 ~~pumps at up to 8,500 cubic feet per second, but only for the~~

- 1 ~~purposes of paragraph (10) of subdivision (a) and in accordance~~
- 2 ~~with subdivision (b).~~

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